

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARL WAYNE BUNTION,	§	
	§	
Petitioner,	§	
	§	
v.	§	Civil Action No. 4:22-cv-1104
	§	*CAPITAL CASE*
BOBBY LUMPKIN, Director,	§	
Texas Department of Criminal	§	
Justice, Correctional Institutions	§	
Division,	§	
	§	
Respondent.	§	

Motion for Stay of Execution

Mr. Buntion is scheduled to be executed on April 21, 2022.

TO UNITED STATES DISTRICT JUDGE KENNETH M. HOYT:

Petitioner, Carl Wayne Buntion, requests that the Court stay his execution, currently scheduled for Thursday, April 21, 2022, after 6:00 pm.

On April 6, 2022, Mr. Buntion filed a second-in-time, but not successive, federal habeas petition. Through this pleading, Mr. Buntion seeks a merits review of his claims that his execution would violate the

Eighth Amendment because: 1) it is based on a finding of future dangerousness, which has proved false; and 2) due largely to the State's delay, he has been incarcerated under a sentence of death for thirty-one years. In the second-in-time petition, Counsel for Buntion, in the prayer for relief, requested a stay of execution. Counsel now files this stand-alone motion and respectfully request this Court stay the execution so that it can meaningfully consider the claims raised in Mr. Buntion's petition.

Equity lies with Mr. Buntion. As explained more thoroughly in the Petition, the facts supporting both claims did not exist when the original habeas proceedings occurred, and Counsel do not believe either of the claims raised in the Petition were ripe until the state trial court entered an execution date.

Mr. Buntion's Petition for a Writ of Certiorari in his previous federal habeas proceeding was denied by the Supreme Court of the United States on October 4, 2021. *Buntion v. Lumpkin*, 142 S. Ct. 3 (2021). The following day, the District Attorney informed Counsel he intended to ask the trial court to schedule Mr. Buntion's execution. Counsel immediately began working on a state habeas application,

raising the two claims raised in Mr. Buntion's pending petition in this Court, to give the state court an opportunity to address the merits of Mr. Buntion's claims. Counsel filed the state habeas application on December 8, 2021, almost one full month before the state trial court entered its order scheduling Mr. Buntion to be executed on April 21. Nevertheless, the state court delayed acting on the state habeas application for almost four months, finally issuing its boilerplate order on March 30, 2022. Had the state court acted in a timelier fashion, it is possible this Court would have had sufficient time to address Buntion's claim without having to issue an order staying his execution.¹

¹ Pursuant to this Court's Supplemental Habeas Corpus Rules, Petitioner has attached a copy of the CCA's order as Exhibit 1 of this motion. As explained more thoroughly in Mr. Buntion's Petition, while the CCA's order states that court did not consider the merits of Mr. Buntion's claims, Counsel believe this Court should find the CCA did, in fact, consider the merits of his claims, and that Mr. Buntion's claims have therefore been exhausted.

Conclusion and Prayer for Relief

WHEREFORE, Petitioner Carl Buntion prays that this Court stay his execution, currently scheduled for April 21, 2022, to allow sufficient time for this Court to consider and dispose of his Petition for a Writ of Habeas Corpus.

Respectfully submitted,

s/ David R. Dow

s/ Jeffrey R. Newberry

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Counsel to Carl Wayne Buntion, Petitioner

Certificate of Service

I certify that on Thursday, April 14, 2022, a copy of the foregoing pleading was electronically served on counsel for Respondent, Cara Hanna.

s/ Jeffrey R. Newberry

Jeffrey R. Newberry